

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

ALVIN BALDUS, CARLENE BECHEN, ELVIRA
BUMPUS, RONALD BIENDSEIL, LESLIE W.
DAVIS, III, BRETT ECKSTEIN, GLORIA
ROGERS, RICHARD KRESBACH, ROCHELLE
MOORE, AMY RISSEEUW, JUDY ROBSON,
JEANNE SANCHEZ-BELL, CECELIA
SCHLIEPP, TRAVIS THYSSEN, CINDY
BARBERA, RON BOONE, VERA BOONE,
EVANJELINA CLEERMAN, SHEILA
COCHRAN, MAXINE HOUGH, CLARENCE
JOHNSON, RICHARD LANGE, and GLADYS
MANZANET,

Plaintiffs,

Case No. 11-CV-00562
JPS-DPW-RMD

TAMMY BALDWIN, GWENDOLYNNE MOORE and
RONALD KIND,

Inteviewer-Plaintiffs,

Members of the Wisconsin Government
Accountability Board, each only in his official
capacity: MICHAEL BRENNAN, DAVID
DEININGER, GERALD NICHOL, THOMAS
CANE, THOMAS BARLAND, and TIMOTHY
VOCKE, and KEVIN KENNEDY, Director and
General Counsel for the Wisconsin Government
Accountability Board,

Defendants,

F. JAMES SENSENBRENNER, JR., THOMAS E.
PETRI, PAUL D. RYAN, JR., REID J. RIBBLE,
and SEAN P. DUFFY.

Inteviewer-Defendants.

VOCES DE LA FRONTERA, INC.,
RAMIRO VARA, OLGA VARA,

JOSE PEREZ, and ERICA RAMIREZ,

Plaintiffs,

v.

Case No. 11-CV-1011
JPS-DPW-RMD

Members of the Wisconsin Government
Accountability Board, each only in his official
capacity: MICHAEL BRENNAN, DAVID
DEININGER, GERALD NICHOL, THOMAS
CANE, THOMAS BARLAND, TIMOTHY
VOCKE, and KEVIN KENNEDY, Director
and General Counsel for the Wisconsin
Government Accountability Board,

Defendants.

AFFIDAVIT OF MARIA S. LAZAR
IN SUPPORT OF RESPONSE TO PLAINTIFFS' MOTION TO COMPEL DISCLOSURES

STATE OF WISCONSIN)
) ss.
DANE COUNTY)

MARIA S. LAZAR, being first duly sworn under oath, states as follows:

1. I am an Assistant Attorney General for the State of Wisconsin and am one of the counsel of record for the defendants in this above-captioned matter.

2. Pursuant to the Court's Scheduling and Discovery Order, dated November 14, 2011, at approximately 4:00 p.m. on November 16, 2011, plaintiffs and defendants simultaneously exchanged Initial Disclosures pursuant to Fed. R. Civ. P. 26(a)(1). (Copies of both plaintiffs and defendants' Initial Disclosures are attached as Exhibits A and B, respectively,

to the Declaration of Rebecca Kathryn Mason in Support of Plaintiffs' Motion to Compel Disclosure, dated November 21, 2011 (Docket Entry 53) ["Mason Declaration"]).

3. On November 17, 2011, plaintiffs' counsel wrote and emailed to me to complain that the defendants' Initial Disclosures were not sufficient. (A copy of that letter from Attorney Mason is attached as Exhibit C to the Mason Declaration).

4. I was presenting all day at the State Bar of Wisconsin's 2011 Annual Bankruptcy Update Seminar in Milwaukee, Wisconsin on November 17, 2011 and did not check my emails that date.

5. Counsel for plaintiffs was advised that I was out of the office all day on November 17, 2011. (See email from Attorney Mason; Exhibit C to the Mason Declaration).

6. On the morning of November 18, 2011, I found the letter on my chair. I immediately emailed Attorney Mason to set up a time to discuss her letter regarding the Initial Disclosures. Later that day, we spoke twice on the telephone. I asserted that the defendants were in compliance and pointed out several misstatements in Attorney Mason's November 17, 2011 letter, to wit:

a. The letter asserts that the defendants did not list *any* names. However, in our first paragraph, the names of seven GAB individuals and staff are listed. Attorney Mason admitted she had neglected to note that inclusion.

b. The letter asserts that the defendants are the state of Wisconsin. However, the defendants are not the State of Wisconsin, they are members of and the executive director of the Government Accountability Board.

c. The letter imputes knowledge of the State to the defendants. Again, they are not the State.

7. In addition, in the final conversation on November 18, 2011 at approximately 12:15 p.m., I offered to attempt to provide the plaintiffs with informal discovery. I also offered to provide the names of the defendants' experts once they were retained—as of that date no experts had yet been retained. I advised Attorney Mason of that fact. I further offered to amend the Initial Disclosures to include the names listed on the plaintiffs' Initial Disclosures. We concluded the telephone call with Attorney Mason promising not to file a Motion to Compel until we spoke again.

8. I have attached, as Exhibit A, a copy of the email I sent to Attorney Mason on November 18, 2011 at approximately 1:50 p.m.; some of its statements are referred to in the plaintiffs' Motion to Compel Disclosure, but it is not attached as an Exhibit.

9. On Monday November 21, 2011, at approximately 4:00 p.m. or so, Attorney Mason called me to advise me that “unless I amended the Initial Disclosures immediately,” the plaintiffs would file a Motion to Compel. I returned her call a few minutes later and stated that I could not immediately file amended Initial Disclosures, but added that there were no names which I could add which were not already listed on the plaintiffs' Initial Disclosures. I asked for additional time, but—due to the dates set forth in the Court's Scheduling and Discovery Order, that was the last date that the plaintiffs could file their Motion.

10. In the second telephone call on November 21, 2011, Attorney Mason assured me that if I amended the Initial Disclosures to include those names, she would promptly withdraw the Motion to Compel.

11. On November 21, 2011 at approximately 5:00 p.m., the plaintiffs filed their Motion to Compel Disclosure.

12. On November 23, 2011, the defendants retained expert Professor Keith Gaddie.

13. On November 25, 2011, at noon, the defendants emailed Amended Initial Disclosures to all parties of record and asked Attorney Mason to withdraw the plaintiffs Motion to Compel. (True and correct copies of the email to Attorney Mason and Defendants' Amended Initial Disclosures, both dated November 25, 2011, are attached hereto as Exhibits B and C, respectively). Per the Court's Scheduling and Discovery Order, on Monday November 28, 2011 at 9:30 a.m., I personally hand-delivered a hard-copy of the Amended Initial Disclosures to Attorney Mason's office and advised the receptionist that the materials were time sensitive.

14. On November 28, 2011, at approximately 2:15 p.m., Attorney Mason emailed me a copy of a letter (a hard copy of which was also delivered to my office shortly thereafter), in which she offered to withdraw, without prejudice, the plaintiffs' Motion to Compel Disclosures and to extend the deadline by which the defendants are to respond to the plaintiffs' Motion to Compel Disclosures provided we meet certain conditions. To wit, Attorney Mason insisted we confirm "that [we] do not intend to use these anonymous individuals as witnesses or refer to their work, including reports and analysis." However, the plaintiffs further note that "they and their work will remain subject to [the plaintiffs'] discovery, of course, but through [the defendants'] Rule 26 supplemented disclosures, [we] in effect have removed them from [our] list of potential witnesses and exhibits." (A true and correct copy of Attorney Mason's November 28, 2011 letter is attached hereto as Exhibit D).

15. At approximately 7:00 p.m., I respectfully declined Attorney Mason's offer. (A true and correct copy of my letter to Attorney Mason, dated November 28, 2011, is attached hereto as Exhibit E). That letter was sent to all counsel of record by email and will be mailed and hand-delivered to Attorney Mason on November 29, 2011.

16. I am making this Affidavit in support of the Defendants' Response to Plaintiffs' Motion to Compel Disclosure.

Dated this 28th day of November, 2011.


MARIA S. LAZAR

Subscribed and sworn to before me
this 28th day of November, 2011.



Notary Public, State of Wisconsin
My commission is permanent

Lazar, Maria S.

From: Lazar, Maria S.
Sent: Friday, November 18, 2011 1:51 PM
To: 'Mason, Rebecca'
Cc: Means, Steven P.
Subject: Brennan v. Baldus, ED Wis. Case No. 11-CV-562

Hi Rebecca:

I was out of the office all day yesterday – giving a presentation at an Annual Bankruptcy Seminar (in Milwaukee), therefore, I just received your letter this morning regarding your concerns with the defendants' Initial Rule 26(a) Disclosures. We have now spoken twice today in conversations where we discussed your concerns and I indicated we were willing to be cooperative and to provide information informally if possible so as to avoid unnecessary costs and delays. But, I did indicate that the defendants in this case – the only defendants named by the plaintiffs – are the GAB (its members and its Director). Thus, the Disclosures we provided were based upon the knowledge and documents in the GAB's possession or control. I am not being difficult here. I represent, not the party or parties who drew this map, but the GAB. Obviously, we intend to defend the constitutionality of the legislative and Congressional maps. But, as I note in the Disclosures, we are in the initial phases of discovery.

In response to your letter, first, we did indeed list names – in fact we listed the following in the first paragraph:

1. Defendant Kevin J. Kennedy (GAB Director and General Counsel), Nathaniel E. Robinson (GAB Division Administrator, Elections Division), and other staff members or contracted employees, including but not limited to, Ross Hein, Sarah Whitt, David Grassel, Ann Oberle, and David Meyer, with respect to the implementation of the new redistricting maps.

You are correct, however, that I did not list the addresses and telephone numbers for these individuals. But, they all work for the defendant GAB and you would not be able to speak with them without my permission; they are represented parties.

Next, your letter implies that the "state" is a party. It is not. The defendants are the GAB – I am only representing the GAB. I have no authority in this case to speak on behalf of the state or the Legislature or any other entity. It may indeed be true that "the state obviously knows the identity of those [nameless] individuals." But, as I mentioned in our call, we are not the State in this case.

You also asked about our "experts." To date, the defendants have not retained any experts – and I have not spoken with any. I anticipate that will be changing in the next week or so, and I have offered to provide you with their names as soon as they are on board – even before the expert report deadline. Right now, I cannot do that. I have also indicated that we could amend the Disclosure to add the names of all or most of the individuals you have listed – as they appear to be individuals who we suspect would possibly have discoverable information – but that is form over substance and wouldn't give you any new information. Obviously, in the course of our discovery, we will be attempting to learn the names of individuals who fit the categories we have listed – and once we do, the Disclosure will be amended.

I realize we are operating in an expedited fashion, and I have offered to provide information and names as we come to know them – right now, I am unaware of any names other than those you have already listed. Rebecca, I don't want to play games, nor do I want to obstruct your or our ability to gather information and capably prepare for the February trial.

So, I am asking exactly what you want us to do at this time. We outlined the areas of witnesses we will be trying to locate. We don't have other names yet. We have offered to assist in informal discovery if it will eliminate unnecessary depositions. We have offered to update the Disclosures once experts are retained. We haven't retained any yet.

Even though the Department of Justice has in the past (and will in the future) represented the State and various individuals in the Legislature, we do not do so in this litigation. Obviously, we want to streamline discovery and to be able

to prepare our defenses as expeditiously as possible, but in reality, we do not at present have other names to go into a Disclosure.

At the conclusion of our latest call (around 12:15 p.m. today), you indicated that you would wait for this email response and that you would not file a Motion to Compel on Monday morning at 10:00 a.m. until we spoke again. I will be available all day today (by cell phone) – and all weekend by cell phone (however, I will be in a noisy environment Saturday afternoon, so I may not hear your call from about 1:30 to 4:00 p.m.) Other than that time, you can reach me at your convenience. I will not be checking my emails, so please call instead.

Both of us being reasonable attorneys, I am confident we will find a way to work this out to everyone's satisfaction without the need for Court intervention.

Maria

Maria S. Lazar
Assistant Attorney General
Wisconsin Department of Justice
P.O. Box 7857
Madison, WI 53707-7857
lazarms@doj.state.wi.us
(608) 267-3519
FAX: (608) 267-2223

Lazar, Maria S.

From: Lazar, Maria S.
Sent: Friday, November 25, 2011 12:01 PM
To: 'Shriner Jr., Thomas L.'; 'rmason@gklaw.com'; 'bwilliam@gklaw.com';
'pshasset@yahoo.com'; 'peter@earle-law.com'; 'phodan@reinhardtllaw.com';
'dkelly@reinhardtllaw.com'
Cc: 'Kasper, Kellen C.'; Means, Steven P.; St. John, Kevin M.; Gibson, Charlotte J.
Subject: Baldus v. Brennan // Voces de La Frontera v. Brennan
Attachments: Rule26Disclosures.Amended signed.pdf

Hello Rebecca (and counsel):

As we discussed, I have revised the original defendants (GAB)'s Initial Disclosures. See attached. I will provide you with a hard-copy, if requested, on Monday. Please review and let me know if you will be withdrawing your Motion to Compel. Our Response is due on Monday.

Please also note that Reinhart, Boerner, Van Deuren have now been retained as outside counsel for the GAB.

Maria

P.S. I note in your last letter that you request that I send all correspondence to Wendy Arends – I could not find an email address for Ms. Arends (on wisbar or on your firm's website).

Maria S. Lazar
Assistant Attorney General
Wisconsin Department of Justice
P.O. Box 7857
Madison, WI 53707-7857
lazarms@doj.state.wi.us
(608) 267-3519
FAX: (608) 267-2223

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Plaintiffs,

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TAMMY BALDWIN, GWENDOLYNNE MOORE and
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CANE, THOMAS BARLAND, and TIMOTHY
VOCKE, and KEVIN KENNEDY, Director and
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Defendants,

F. JAMES SENSENBRENNER, JR., THOMAS E.
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Inteviewer-Defendants.

VOCES DE LA FRONTERA, INC.,
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JOSE PEREZ, and ERICA RAMIREZ,

Plaintiffs,

v.

Case No. 11-CV-1011
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CANE, THOMAS BARLAND, TIMOTHY
VOCKE, and KEVIN KENNEDY, Director
and General Counsel for the Wisconsin
Government Accountability Board,

Defendants.

DEFENDANTS' AMENDED INITIAL RULE 26(a) DISCLOSURES

NOW COME the defendants by their attorneys, J.B. Van Hollen, Attorney General, and Maria S. Lazar, Assistant Attorney General, and make the following amended initial disclosures pursuant to Fed. R. Civ. P. Rule 26(a)(1):

A. Individuals potentially having knowledge that the defendants may use to support their claims or defenses.

Defendants assert that the Government Accountability Board ("GAB") did not prepare, edit, or in any other way draft the redistricting maps for the new boundaries which were passed by the Legislature on July 19 and 20, 2011 and signed into law (2011 Wisconsin Acts 43 and 44) by the Governor on August 9, 2011. GAB and the individual defendants have been sued because of their statutory responsibility to implement the districts that are now the law of the State. The defendants had no communications with the Legislature, prior to the enactment of the new

redistricting maps on August 9, 2011, with respect to the boundaries of the new maps. Accordingly, the information and details provided in these Amended Initial Rule 26(a) Disclosures are preliminary and to the best of the defendants' knowledge at this time. Defendants may amend these Disclosures as more discovery is completed.

Based upon the foregoing, the defendants make the following amended initial disclosures in accordance with the Court's Scheduling Order dated November 14, 2011:

1. Defendant Kevin J. Kennedy (GAB Director and General Counsel)
Government Accountability Board
212 East Washington Avenue, 3rd Floor
Madison, WI 53703
(608) 266-8005

Implementation of new redistricting maps (2011 Wisconsin Acts 43 and 44), other election administration, including but not limited to, election process, deadlines, past elections and historical information.

2. Nathaniel E. Robinson (GAB Division Administrator, Elections Division)
Government Accountability Board
212 East Washington Avenue, 3rd Floor
Madison, WI 53703
(608) 266-8005

Implementation of new redistricting maps (2011 Wisconsin Acts 43 and 44), other election administration, including but not limited to, election process, deadlines, past elections and historical information.

3. Ross Hein
Government Accountability Board
212 East Washington Avenue, 3rd Floor
Madison, WI 53703
(608) 266-8005

Implementation of new redistricting maps (2011 Wisconsin Acts 43 and 44), other election administration, including but not limited to, election process, deadlines, and past elections.

4. Sarah Whitt
Government Accountability Board
212 East Washington Avenue, 3rd Floor
Madison, WI 53703
(608) 266-8005

Implementation of new redistricting maps (2011 Wisconsin Acts 43 and 44), other election administration, including but not limited to, election process, deadlines, and past elections.

5. David Grassel
Government Accountability Board
212 East Washington Avenue, 3rd Floor
Madison, WI 53703
(608) 266-8005

Implementation of new redistricting maps (2011 Wisconsin Acts 43 and 44), other election administration, including but not limited to, election process, deadlines, and past elections.

6. Ann Oberle
Government Accountability Board
212 East Washington Avenue, 3rd Floor
Madison, WI 53703
(608) 266-8005

Implementation of new redistricting maps (2011 Wisconsin Acts 43 and 44), other election administration, including but not limited to, election process, deadlines, and past elections.

7. David Meyer
Government Accountability Board
212 East Washington Avenue, 3rd Floor
Madison, WI 53703
(608) 266-8005

Implementation of new redistricting maps (2011 Wisconsin Acts 43 and 44), other election administration, including but not limited to, election process, deadlines, and past elections.

8. Ronald Keith Gaddie, factual and expert testimony
Professor of Political Science
The University of Oklahoma
455 West Lindsey Street, Room 222
Norman, OK 73019-2001
(405) 325-4989

Professor Gaddie will provide testimony regarding the constitutional requirements of the legislative maps at issue including, but not limited to, contiguity, compactness, communities of interest, core district populations, population requirements, voting rights, municipal and county splits, pairings, potential disenfranchisement and the lack of impermissible political gerrymandering of districts.

9. Individuals from the Legislature or one of its agencies who can provide factual, population, census data and other historical information related to the constitutional requirements of legislative maps at issue.

10. Individuals from the Legislature, and/or its various bodies, or those individuals on the Legislature's behalf, who were involved in drawing the redistricting maps that were signed into law on August 9, 2011, including without limitation, those individuals who reviewed the 2010 decennial census and assisted in determining the appropriate, constitutional boundaries for the state and Congressional districts as memorialized in Acts 43 and 44:

Adam Foltz
Room 211 West, State Capitol
Madison, WI 53708
(608) 266-3387

Tad Ottman
Room 211 South, State Capitol
Madison, WI 53708
(608) 266-5660

Joe Handrick
Reinhart, Boerner, Van Deuren, S.C.
1000 North Water Street, Suite 1700
Milwaukee, WI 53202
(414) 298-1000

11. Individuals from the Legislature, and/or its various bodies, or those individuals on the Legislature's behalf, who were involved in reviewing census and population data from the 2010 decennial census to insure minimum population deviation for the new districts:

Adam Foltz
Room 211 West, State Capitol
Madison, WI 53708
(608) 266-3387

Tad Ottman
Room 211 South, State Capitol
Madison, WI 53708
(608) 266-5660

Joe Handrick
Reinhart, Boerner, Van Deuren, S.C.
1000 North Water Street, Suite 1700
Milwaukee, WI 53202
(414) 298-1000

12. Individuals from the Legislature, and/or its various bodies, or those individuals on the Legislature's behalf, who were involved in reviewing population and other data so as to preserve, to the extent possible and practicable, the core population of prior districts as well as communities of interest:

Adam Foltz
Room 211 West, State Capitol
Madison, WI 53708
(608) 266-3387

Tad Ottman
Room 211 South, State Capitol
Madison, WI 53708
(608) 266-5660

Joe Handrick
Reinhart, Boerner, Van Deuren, S.C.
1000 North Water Street, Suite 1700
Milwaukee, WI 53202
(414) 298-1000

13. Individuals from the Legislature, and/or its various bodies, or those individuals on the Legislature's behalf, who assisted the Legislature in insuring that the new redistricting maps, to the extent possible, kept wards and municipalities whole within legislative district boundaries and to the extent possible, recognized local government boundaries:

Adam Foltz
Room 211 West, State Capitol
Madison, WI 53708
(608) 266-3387

Tad Ottman
Room 211 South, State Capitol
Madison, WI 53708
(608) 266-5660

Joe Handrick
Reinhart, Boerner, Van Deuren, S.C.
1000 North Water Street, Suite 1700
Milwaukee, WI 53202
(414) 298-1000

14. Individuals from the Legislature, and/or its various bodies, or those individuals on the Legislature's behalf, who assisted the Legislature to insure that, if voters were shifted

from odd to even senate districts, they were not unnecessarily disenfranchised by being deprived of the opportunity to vote:

Adam Foltz
Room 211 West, State Capitol
Madison, WI 53708
(608) 266-3387

Tad Ottman
Room 211 South, State Capitol
Madison, WI 53708
(608) 266-5660

Joe Handrick
Reinhart, Boerner, Van Deuren, S.C.
1000 North Water Street, Suite 1700
Milwaukee, WI 53202
(414) 298-1000

15. Individuals from the Legislature, and/or its various bodies, or those individuals on the Legislature's behalf, who reviewed the 2010 decennial census data and the previous districting maps to insure that the new districts were as geographically compact as practicable:

Adam Foltz
Room 211 West, State Capitol
Madison, WI 53708
(608) 266-3387

Tad Ottman
Room 211 South, State Capitol
Madison, WI 53708
(608) 266-5660

Joe Handrick
Reinhart, Boerner, Van Deuren, S.C.
1000 North Water Street, Suite 1700
Milwaukee, WI 53202
(414) 298-1000

16. Individuals from the Legislature, and/or its various bodies, or those individuals on the Legislature's behalf, who assisted the Legislature to prevent unnecessary and unconstitutional voter dilution of minority voters:

Adam Foltz
Room 211 West, State Capitol
Madison, WI 53708
(608) 266-3387

Tad Ottman
Room 211 South, State Capitol
Madison, WI 53708
(608) 266-5660

Joe Handrick
Reinhart, Boerner, Van Deuren, S.C.
1000 North Water Street, Suite 1700
Milwaukee, WI 53202
(414) 298-1000

17. Individuals from the Legislature, and/or its various bodies, or those individuals on the Legislature's behalf, who assisted the Legislature to insure that the new districts reflected communities of interest:

Adam Foltz
Room 211 West, State Capitol
Madison, WI 53708
(608) 266-3387

Tad Ottman
Room 211 South, State Capitol
Madison, WI 53708
(608) 266-5660

Joe Handrick
Reinhart, Boerner, Van Deuren, S.C.
1000 North Water Street, Suite 1700
Milwaukee, WI 53202
(414) 298-1000

18. Individuals who reside in, or are familiar with, challenged districts and/or pre-existing districts with respect to facts about those districts that are relevant to the constitutionality of the new redistricting maps.
19. Experts retained on behalf of the Legislature, and/or its various bodies, who assisted in preparing the redistricting maps.
20. Experts retained, or to be retained, on behalf of the defendants who will assist in defending against the allegations in the Second Amended Complaint.

Ronald Keith Gaddie, factual and expert testimony
Professor of Political Science
The University of Oklahoma
455 West Lindsey Street, Room 222
Norman, OK 73019-2001
(405) 325-4989

Professor Gaddie will provide testimony regarding the constitutional requirements of the legislative maps at issue including, but not limited to, contiguity, compactness, communities of interest, core district populations, population requirements, voting rights, municipal and county splits, pairings, potential disenfranchisement and the lack of impermissible political gerrymandering of districts.

21. Other individuals whose identity will become known through further discovery.

Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(i), the parties are to provide “the name, and if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment.” Accordingly, the names listed above consist of the individuals, presently known to the defendants, who the defendants may use to support their claims or defenses. *Gluck v. Ansett Australia Ltd.*, 204 F.R.D. 217 (D.D.C. 2001) (plaintiff challenging defendants 26(a) disclosures required to show

that defendant intended to use undisclosed individuals at trial); *A Traveler v. CSX Transp., Inc.*, No. 1:06-cv-56, 2006 WL 2051732 (July 20, 2006, N.D. Ind.). Federal Rule of Civil Procedure 26, 2000 Notes of Advisory Committee, ¶9 ("A party is no longer obligated to disclose witnesses or documents, whether favorable or unfavorable, that it does not intend to use. . . . As case preparation continues, a party must supplement its disclosures when it determines that it may use a witness or document that it did not previously intend to use."); *Crouse Cartage Co. v. Nat'l Warehouse Inv. Co.*, No. IP02-0071-c-T/K, 2003 WL 21254617 (S.D. Ind. April 10, 2003) (challenge to 26(a) disclosures failed to clear "high hurdle" of demonstrating intent to use undisclosed witness).

Moreover, the matter at issue in this case is the constitutionality of Acts 43 and 44. Several of the individuals listed by the plaintiffs—aside from their expert—appear to be relevant only to the intent of the Legislature when it enacted these Acts. The Wisconsin State Supreme Court has expressly noted that legislative intent is determined by the language of a statute, not the subjective views of individual legislators who may have supported a bill. "It is the enacted law, not the unenacted intent, that is binding on the public." *State ex rel. Kalal v. Circuit Court*, 2004 WI 58, ¶ 44, 271 Wis. 2d 633, 681 N.W.2d 110. While there may be some inquiry into the action taken by the Legislature, "[g]overnmental action only fails rational basis scrutiny if no sound reason for the action can be hypothesized." *Board of Trustees v. Garrett*, 531 U.S. 356, 367 (2001). Finally, it is quite difficult, if not nearly impossible to determine legislative intent. *Edwards v. Aguillard*, 482 U.S. 578, 636-37 (1987) (J. Scalia, dissenting) ("discerning the subjective motivation of those enacting statutes is, to be honest, almost always an impossible task. The number of possible motivations, to begin with, is not binary, or indeed finite . . . To look for the sole purpose of even a single legislator is probably to look for something that does

not exist.”) Indeed, if the trial in this case will delve into subjective motivations, it will not be completed within the four days allotted. Therefore, some of the individuals identified in the plaintiffs’ Initial Disclosures are not relevant to this challenge, and, are appropriately not identified by the defendants.

B. Potentially relevant documents.

Defendants may use the following documents to support their defenses in this matter.

1. Documents in the possession of the GAB with respect to the implementation of the legislative maps at issue.
2. The approved legislative maps which were created (by the Legislature or the Courts) each decade from 1970 through 2002.
3. The decennial census from 1970 through 2010.
4. Documents which detail population growth and changes from 1970 through 2010, including, but not limited to, historical, minority-based, social, and other community of interest breakdowns.
5. Historical documents and information relating to the constitutional requirements for the legislative maps at issue, including, but not limited to, contiguity, compactness, communities of interest, core district populations, population requirements, voting rights, municipal and county splits, pairings, and potential disenfranchisement.
6. Documents in the possession of the Legislature, and/or its various bodies, that were utilized to draft the 2011 legislative maps at issue.
7. Expert reports and analysis, if any, in the possession of the Legislature, and/or its various bodies, that were utilized to draft the 2011 legislative maps at issue.

8. The defendants reserve the right to further supplement this response with any documents that become known through further discovery.

Any of the documents listed above which are in the possession of defendants will be made available for inspection by the other parties at a time and place mutually agreed upon by all parties. Any copies that are requested as a result of any inspection may be obtained at the expense of the requestor at the usual State copying rate.

C. Calculation of damages.

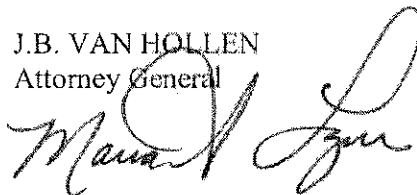
Monetary damages are not being sought in this action. Defendants reserve the right to present rebuttal evidence through their named fact and expert witnesses, as to any damages alleged by the plaintiffs.

D. Insurance agreements.

The State of Wisconsin is self-insured.

Dated this 25th day of November, 2011.

J.B. VAN HOLLEN
Attorney General



MARIA S. LAZAR
Assistant Attorney General
State Bar #1017150

Attorneys for Defendants

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-3519
(608) 267-2223 (fax)
lazarms@doj.state.wi.us

November 28, 2011

BY HAND DELIVERY AND E-MAIL

Maria S. Lazar
Assistant Attorney General
Wisconsin Department of Justice
17 W. Main Street
Madison, Wisconsin 53703

Baldus et al. v. Brennan et al.
Case No. 11-CV-562

Dear Maria:

We have received the state's amended Rule 26 disclosures. We will withdraw the motion to compel without prejudice upon your confirmation that you do not intend to use these anonymous individuals as witnesses or refer to their work, including reports and analysis. They and their work will remain subject to our discovery, of course, but through your Rule 26 supplemented disclosures, you in effect have removed them from your list of potential witnesses and exhibits.

Specifically, paragraph 19 states that among those having knowledge of the issues in this case are unnamed "[e]xperts retained on behalf of the Legislature, and/or its various bodies, who assisted in preparing the redistricting maps." They remain anonymous. Yet, by definition, you know their names because they were "retained" and "assisted in preparing the redistricting maps." And, by definition, they have information subject to Rule 26. In fact, paragraph B.6 states that you "may use" "[d]ocuments in the possession of the Legislature, and/or its various bodies, that were utilized to draft the 2011 legislative maps at issue." Moreover, paragraph B.7 states that you also may use "[e]xpert reports and analysis, if any...utilized to draft the 2011 legislative maps at issue." Notwithstanding the use of the phrase "if any," we can only assume that you know whether or not there are any.

To ensure we do not place unnecessary burdens on the Court, we agree to defer your response to our motion until Thursday, December 1, 2011.

GODFREY & KAHN, S.C.


Rebecca Kathryn Mason

RKM:aeg

cc: P. Scott Hassett
Peter G. Earle
Thomas L. Shriner, Jr.
Patrick Hodan

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STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

J.B. VAN HOLLEN
ATTORNEY GENERAL

Kevin M. St. John
Deputy Attorney General

Steven P. Means
Executive Assistant

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
www.doj.state.wi.us

Maria S. Lazar
Assistant Attorney General
lazarms@doj.state.wi.us
608/267-3519
FAX 608/267-2223

November 28, 2011

VIA EMAIL AND MAIL

Ms. Rebecca K. Mason
Godfrey & Kahn, S.C.
780 North Water Street
Madison, WI 53202-3512

Re: *Alvin Baldus, et al. v. Michael Brennan, et al.*
Case No. 11-C-00562

Dear Rebecca:

I am in receipt of your letter this afternoon in which you offered to extend the deadline by which the defendants are to respond to the plaintiffs' Motion to Compel Disclosures provided we meet certain conditions. For the reasons set forth below, we cannot agree to your conditions.

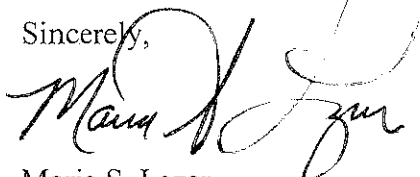
Initial Disclosures under Rule 26 of the Federal Rules of Civil Procedure are not witness lists. Nor are they exhibit lists. Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(i), the parties are to provide "the name, and if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party *may* use to support its claims or defenses, unless the use would be solely for impeachment." (emphasis added). There is nothing in that Rule which indicates that the "Initial" Disclosures are a final witness list. Furthermore, the defendants need not disclose individuals unless they have information the *defendants* might use. The point of Initial Disclosures is to provide information the *disclosing* party may use to support its claims or defenses. It is not to provide information that the receiving party might use – that is what discovery is for.

In sum, the Amended Initial Disclosures are intended to provide a start to the discovery process and to provide names and documents which the parties *may* use in support of their claim or defense. Nothing less, but certainly nothing more.

Rebecca K. Mason.
November 28, 2011
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We will be filing our Response to your Motion to Compel later today.

Sincerely,

A handwritten signature in cursive script, appearing to read "Maria S. Lazar".

Maria S. Lazar
Assistant Attorney General
State Bar #1017150

MSL:

c (by email):

Jacqueline E. Boynton
Peter G. Earle
P. Scott Hassett
Thomas L. Shriner, Jr.
Patrick Hodan
Kevin Kennedy
Steven P. Means